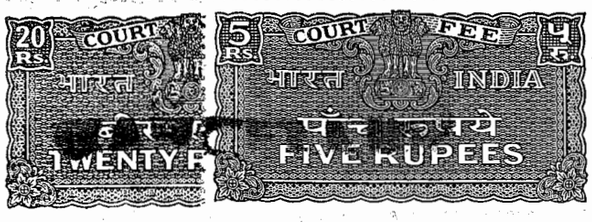

CF 25/-

(2)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (MP).

Writ Petition No. 451 /1997

Petitioner :: M/s Durg Roadways Pvt. Limited. G.E. Road, through Managing Director Shri N.S. Bal. Distt : Durg (MP).

Versus

Respondents ::1. The State of M.P. through the Secretary Department of Transport Vallabh Bhawan, Bhopal (MP).

2. The Registering Authority/Tax Officer/Additional Regional Transport Officer, Durg, Distt Durg (MP).

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WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA :

(47)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP. 451/97 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	1-9-2005 Mr. B.K. Rawat, counsel for the petitioner. Mr. Yashwant Singh Thakur, Govt. Advocate for the State/ respondents. Arguments heard. The petitioner has filed this writ petition under Article 226/227 of the Constitution of India, questioning the legality of the demand notice dated 13-1-1997, whereby the petitioner has been directed to deposit the difference of tax amounting to Rs.37,818/- and penalty thereon amounting to Rs.75,634/- ~~raised~~ dated on audit objection for the period from April, 1993 to December, 1993, in respect of Stage Carriage Permit No.123/56 on the route Durg to Bemetara and Permit No.17/79 on the route Balaghat to Durg. Mr. B.K. Rawat, learned counsel for the petitioner submitted that the said demand has been raised without giving opportunity of hearing to the petitioner as well as without making any assessment order. Similarly, the penalty amount of Rs.75,634/- has been imposed on the petitioner without giving opportunity of hearing to explain his conduct. Therefore, the order impugned is liable to be quashed. On the other hand, Mr. Yashwant Singh Thakur, learned Govt. Advocate argued that the petitioner was required to pay tax Rs.58/- for 80 kms. and thereafter, Rs.6/- for each 10 kms., whereas the petitioner paid tax as per the total kilometers covered by all the vehicles not making payment of tax in the manner provided in Schedule-I of Section 3 of the Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991. The correct calculation arrived at by the respondents is annexed with the return as Annexures R-2 & R-3. Learned Govt. Advocate further submitted that the amount asked for by the	

SD/ES/2005 - 20,000

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

respondents has already been deposited by the petitioner, whereas, learned counsel for the petitioner submits that the said amount has been deposited under protest.

Learned counsel for the petitioner placed reliance on the decision of Madhya Pradesh High Court reported in **AIR 1968 Madhya Pradesh 36 (Raipur Transport Co. Private Ltd., Raipur v. M.P. Singh and others)** in which the M.P. High Court has held that

> "It is plain from section 7 of the Act that where no returns have been filed or where the returns submitted by the operator are incorrect or incomplete, the Tax Officer is required to determine the sum payable to the State Government by way of tax after making due enquiry. This clearly envisages an assessment proceeding and the making of an assessment order. So also, whether the whole or any portion of the tax leviable under the Act for any month has escaped assessment, the Tax Officer is required to assess the tax which has escaped assessment."

On the analogy of this judgment, if we look into the facts of the present case, the objection of the respondents was that the petitioner deposited the tax as per the total kilometers covered by all his vehicles and not in the manner provided under Schedule-I of Section 3 of the Act which envisages that the petitioner was required to pay Rs.58/- per seat per month up to 80 kms. and thereafter for each 10 kms. or part thereof Rs.6/- per seat per month. Even if the point raised by the respondents is accepted as it is, same comes under that the return submitted by the petitioner was incorrect or incomplete. Even then, when the fact of submission of incorrect return came to the notice of the Tax Officer, he ought to have first made the assessment in accordance with the provisions of law, and also before imposing any

(51)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Soma	penalty he ought to have given opportunity of hearing and explaining his conduct to the petitioner which was not done in this case. Therefore, the demand notice dated 13-1-1997 is liable to be quashed, and it is accordingly, quashed. The respondent Tax Officer is directed to make assessment order after hearing the petitioner and decide the matter, in accordance with law. **Sd/-** **L.C. Bhadoo** **Judge**	

SD/FS/2005 - 20,000